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IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY FOURTH DAY OF JANUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

WRIT PETITION NO : 16573 of 1999

Between:

Sri. K.Srinivas, s/o. Bulli Venkanna, r/o. Analyst, A.P. Pollution Control Board, Warangal, Warangal Dist.

..... PETITIONER

AND

1 The Government of A.P., Rep. by its Principal Secretary, Environment, Forests, Science & Technology Dept., Secretariat, Hyderabad.
2 The Andhra Pradesh Pollution Control Board., Rep. by its Chairman, HUDA Complex, Maitrivanam, II Floor, Ameerpet, Hyderabad.
3 The Andhra Pradesh Pollution Control Board, Rep. by its Member Secretary, HUDA Complex, Maitrivanam, lind Floor, Ameerpet, Hyderabad.
4 The Andhra Pradesh Pollution Control Board, Rep. by its Addl, Secretary, HUDA Complex, Maitrivanam, lind Floor, Ameerpet, Hyderabad.

.....RESPONDENTS.

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate writ, order or direction more particularly a writ of Madamus declaring the action of the 2nd Respondent Authority in appointing the petitioner as Analyst Grade – II as a fresh appointment, contrary to the 1st Respondent's proceedings vide letter No. 193/ENV/95-5
dt. 01-11-1995 and contrary to the orders of this Hon'ble court passed in W.P.No. 19656/1996 and W.P.No. 11039/1992 as Arbitrary, illegal, Null & Void and against the Principles of Natural Justice and to issue consequential direction to the

Respondent Board to regularize the services of the petitioner from the date of original appointment i.e. 21-02-1989, with all consequential benefits.

Counsel for the Petitioner: MR.VENKATESWARA RAO GUDAPATI

Counsel for the Respondent No.1.: GP FOR IRRIGATION & COMM AREA DEV.

Counsel for Respondents 2 to 4: Sri A. RAMALINGESHWARA RAO.

The Court made the following :

THE HON'BLE SRI JUSTICE B. PRAKASH RAO

WRIT PETITION NO.16573 OF 1999

ORDER:

Heard Sri G.Venkateswara Rao, the learned counsel appearing for the petitioner and Sri A.Ramalingeswara Rao, the learned Standing Counsel appearing on behalf of the respondents 2 to 4.

The petitioner, who is working as Analyst Grade-II with the respondents 2 to 4, filed this writ petition, *inter alia*, seeking for a writ of Mandamus to declare the action of the second respondent in appointing him in the said post as a fresh appointment as contrary to the proceedings of the first respondent dated 01.11.1995 and also contrary to the directions given by this Court in earlier Writ Petition Nos.19656 of 1996 and 11039 of 1992 and consequently direct the respondents 2 to 4 to regularize his services from the date of his original appointment with all consequential benefits.

The case of the petitioner, in brief, is that initially he was appointed as an Analyst Grade-II along with 17 others vide Proceedings dated 21.02.1989 and he was posted at Rajahmundry as per the Proceedings dated 25.03.1985 on completion of two weeks training where he joined on 30.03.1989. While so the petitioner got a seat in M.Tech in Jawaharlal Nehru Technological University, Hyderabad which was

recommended by the Environmental Engineer, Regional Office, Rajahmundry as per the proceedings dated 17.01.1991. Since no prior sanction was granted by the authorities, the petitioner sought leave which was sanctioned enabling him to attend the classes from 13.02.1991 to 07.03.1991. Subsequently, again the petitioner joined duty on 08.03.1991 and continued till 01.04.1991. The petitioner had filed representation to the second respondent to relieve him since he is missing the classes and he may loose the seat also. Accordingly, the second respondent issued relieve proceedings dated 10.07.1991. Thereafter, the petitioner joined the course at Hyderabad and successfully completed the same by obtaining 3rd rank from the University and later on he joined once again by reporting to duty on 20.04.1992. However, the respondents have issued a show cause notice on 15.04.1992 calling upon the petitioner to explain as to why his services should not be terminated for un-authorized absence. The petitioner has pointed

out all the circumstances in his explanation, stating that the said absence cannot be treated as un-authorized and to drop the proceedings. However, without considering the same, the petitioner's services were terminated vide proceedings 23.07.1992 with effect from 16.03.1993. Challenging the same, the petitioner has filed the Writ Petition No.11089 of 1992 which was disposed of as per the orders dated 28.06.1995, directing the authorities to consider his case on the basis of the qualifications acquired and also taking into consideration the petitioner is a physically handicapped. Accordingly, the petitioner has submitted a representation and whereupon the first respondent as per the proceedings dated 01.11.1995 directed the Board to consider the case of the petitioner for reinstatement. Inspite of the same, the petitioner's case is remained un-considered. Hence, the petitioner filed another Writ Petition No.19656 of 1996 which was disposed of as per the orders dated 26.11.1996, once again directed the respondent authorities to consider the petitioner's case in the vacancies of Analyst Grade-II which are being filled and the process has to be completed within 10 weeks. Thereafter, the respondents have issued proceedings dated 01.04.1997 appointing the petitioner as temporarily in the post of Analyst Grade-II and the petitioner joined duty on 15.04.1997 at the Regional Office, Nizamabad. Thereafter, the petitioner had made several representations including the one dated 05.05.1998 to regularize his services from the date of initial appointment and not to treat as a fresh appointment. All these representations have remained un-considered. Hence, the writ petition.

Contesting the claim of the petitioner, the case of the respondents as sworn to by the Senior Consultant (Admn.) Sri S.Srinivasa Murthy in the counter affidavit, it is stated that there is no dispute in regard to the petitioner's initial appointment and on 21.02.1989 temporarily and reporting for duty on 09.03.1989. After completion of training, the petitioner was posted at Rajahmundry where he joined on 30.03.1989. It is stated that the petitioner has applied for Earned Leave/Study Leave/ EOL from 01.02.1991 to 31.05.1992 stating that he was selected for M.Tech (Bio-Technology) through a competitive examination at JNTU on a regular basis. Further, it is pointed out that the petitioner did not submit any application for such M.Tech course through proper channel but it is only after the selection he requested for sanction of leave and also permission to study M.Tech course on regular basis vide his letter dated 17.01.1991. The said application was forwarded by the Environmental Engineer, Regional Office, Rajahmundry to the Principal Secretary without any recommendation. It was stated that as on the date of application since the petitioner has put in one year 10 months service, the leave at his credit was only 30 days. As per Rule 23 (a) of A.P. Leave Rules. A temporary government servant can be sanctioned E.O.L. for higher studies only on putting up a service of three years. Therefore, it was stated that his case for sanction of E.O.L. for 18 months could not be considered at Board level. Hence, the Government was addressed to consider his case and communicate acceptance as per the letter, dated 26.03.1991.

The petitioner had reported for duty on 08.03.1991requestring to treat his absence from 13.02.1991 to 07.03.1991 as earned leave and also for sanction of EOL for two months from 25.03.1991 to 25.05.1991 on personal grounds. These applications were forwarded to the Board by the Environmental Engineer, Rajahmundry on 14.03.1991 and thereupon the Board had sanctioned first spell of earned leave from 13.02.1991 to 07.03.1991 vide proceedings No.944/PCB/B2/88-2469, dated 21.07.1991. The Environmental Engineer has informed as per letter dated 10.07.1991 that the petitioner was relieved in the month of April, 1991 as per the oral instructions of the Member Secretary. A show cause notice was issued to the petitioner to explain as to why his services should not be terminated in view of the un-authorized absence from duty on 15.04.1992, which was received by him personally on 02.05.1992. The petitioner had submitted a representation on 04.05.1992 stating that he is likely to report for duty at Regional Office, Rajahmundry

as the examinations of M.Tech. course have been completed and he stated that he had not received permission or any other communications till 07.03.1991 and pointing out several other circumstances leading to join his course at the University. It was further pointed out that as per Rule 6 (a) of the A.P. Leave Rules read with proviso to F.R.73 a temporary government servant working under emergency provisions who remain absent from duty without applying leave or extension to which he is not entitled to, shall be deemed to have been discharged from duty with effect from the date of absence and also government circular memo dated 25.12.1991. Hence, the petitioner was discharged from service with effect from 18.03.1991as per the proceedings dated 23.07.1992. In the writ petition filed by the petitioner in W.P.11039 of 1992 as per the orders dated 23.07.1992 a direction was given only to consider the case of the petitioner and dispose of the representation by taking into consideration his higher qualifications which has been subsequently acquired and also that the petitioner is a physically handicapped. In pursuance of the direction, the Board has taken a decision as per Resolution No.944 to the effect that since the petitioner was removed from service on the ground of un-authorized absence, it is not appropriate to permit reinstatement at this stage which was duly informed to the petitioner as per the letter dated 19.10.1995. But on the basis of the representation made by the petitioner, the Principal Secretary to Government in EFS&T Department has advised the Board to consider the request of the petitioner for reinstatement. Therefore, the matter was again placed before the Board on 30.11.1995 and as per the Resolution No.986 it was decided that the petitioner's case would be taken as fresh done by the Board and further such directions would be contrary to this Court's Judgment in the Resolution of the Board. The petitioner was duly informed of the same as per the letter dated 22.02.1996. The post of Analyst Grade-II was already filled up with by one Sri P.Seetharamaiah by regularizing his services and decided to reconsider the case of the petitioner. However, in the latter Writ Petition No.19656 of 1996, this Court as per orders dated 26.11.1996 directed to consider the case of the petitioner and pass appropriate orders. Accordingly, the petitioner was appointed as Analyst Grade-II as fresh appointment and in terms of the resolutions of the Board dated 07.08.1995 and 30.11.1995, he was posted at Nizamabad and he reported for duty on 15.04.1997. In view of the aforesaid circumstances, it is stated that the question of reinstatement of the petitioner back into service does not arise and so many directions were given by this Court and the Government, his case was considered and accordingly given

fresh appointment. Further, the petitioner sought for M.Tech course without proper channel and he joined the said course only on his own. Therefore, the petitioner cannot make any claim and further there being no challenge for the orders of termination, the question of fresh appointment does not arise. It is further contended that the direction given by the first respondent is only advisory in nature and the decision has been aptly taken for appointment afresh. In view of the same, Iit is stated that the petitioner is not entitled to any indulgence from this Court.

The learned counsel appearing for the petitioner by going through the entire record and on the basis of the facts as stated above sought to place reliance in the directions given by the respondent on 01.11.1995 and also the directions given by the Court in both the writ petitions to show that there is a positive direction for reinstatement and not for a fresh appointment as such and therefore the entire approach of the respondent is wholly erroneous.

The learned Standing Counsel appearing on behalf of the respondents 2 to 4, submits that in view of the fact that the orders of termination are not varied in any manner and the direction being given only to consider having regard to the qualifications and fact that the petitioner is a physically handicapped, it cannot be said that the petitioner is entitled to reinstatement. Further, as long as the orders of termination are not set aside, the question of reinstatement does not arise. Considering the submissions made and also on perusal of the matter, the question which falls for consideration is as to whether on the facts and circumstances of the case, the petitioner is entitled to reinstatement in the earlier post held by him.

There is no dispute to the basic facts in regard to the petitioner's appointment in the post of Analyst Grade-II on 21.02.1989 and he joined service on 30-03-1989 on successful completion of training and he was posted at Rajahmundry and he was working as such. While so, the petitioner obtained a seat in M.Tech in Jawaharlal Nehru Technological University, Hyderabad and he is sought to attend and complete the course. Admittedly, the petitioner did not seek any prior permission as required under Rules for the purpose of such course, it is only after he required the

seat as rightly pointed out by the respondents, he is sought for such permission and leave. However, according to the respondents and especially in view of Rule No.23(a) of the A.P. Leave Rules, he would not be entitled for any such EOL for the purpose of higher studies. Therefore, admittedly, there is no permission obtained from the respondents herein prior to the seeking for admission into the course or joining the same. Even in regard to the leave also, it was granted for various spells, which enabled the petitioner to join the classes and complete the same though successfully with 3rd rank. However, the fact remains that the petitioner's absence for such a continued absence for a period which exceeds beyond the permitted arena though with a good reason and also to the knowledge of the respondents. However, it cannot be said that the said absence is with a sanctioned leave. Therefore, irrespective of the fact that the petitioner had studied M.Tech to the knowledge of the respondent, still remains an un-authorised one. Even when a reading of Rule 6(a) of A.P. Leave Rules read with proviso to F.R. 73,s the petitioner would not have been granted any such long leave. Therefore, after issuing a show cause notice and consideration of the petitioner's representation, the orders of termination were passed on 23.07.1992 with effect from 23.07.1993. It is to be noticed that in this writ petition, there being no challenge as against the orders of termination nor any such question being involved, it is not necessary to go into the correctness of the orders of termination. However, the petitioner did make a challenge in an earlier Writ Petition No.11039 of 1992, the same was disposed of on 28.06.1995 wherein this Court gave direction to the respondents herein to consider the case of the petitioner and dispose of his representation in this regard and the respondents shall take into consideration the higher educational qualifications subsequently acquired by him after joining the Board and further the fact that the petitioner is a physically handicapped person and an appropriate decision shall be taken in this regard by the Board within a period of three months from that date. It was further observed that this Court did not express any opinion with regard to the merits of the case and leaving open for the petitioner to have recourse for appropriate remedy as and when circumstances warrant. On a reading of the said order, it is quite clear that though the petitioner challenged the orders of termination dated 23.07.1992, the same were not set aside or varied and when a direction issued is only with regard to the representation for considering his case by taking into account the educational qualifications and the physical handicap . Therefore, it cannot be said that under the said orders, this court in any way interfere with the said

orders of termination. This was followed by the representation by the petitioner to the first respondent who passed the orders on 01.11.1995 whereunder it was stated after careful consideration of the entire matter, it is to advise the Board to consider the request of the petitioner for his reinstatement in the Board. It is this order which is sought to be stressed much on behalf of the petitioner to say that having regard to the direction issued by the respondent for reinstatement, there is no option left with the respondent but not to treat the same for a fresh appointment. However, by taking into consideration the said decision of the first respondent, the matter was taken up by the respondents and orders were passed on 01.04.1997 appointing the petitioner afresh as Analyst Grade-II and accordingly the petitioner has joined on 15.04.1997 and working as such. Even though the petitioner has subsequently filed various representations including the one dated 05.05.1998 for considering his case for regularization of his service from the date of his earlier appointment i.e., 21.02.1989. In this regard, it is relevant to note the resolutions passed by the respondent Board while considering the petitioner's case. Initially, subsequent to the orders of this Court on 28.06.1995, the Board passed resolution No.944 on 07.08.1995 which reads as follows:

"There was discussion on the High Court order in regard to the reinstatement of Sri K.Srinivas, Former Analyst Gr.II. It was agreed that at the time of fresh appointments, the petitioner could be given due opportunity considering his previous experience, high qualification and handicap. However, as he was removed from Board responsibilities on ground of nauthorized absence, it would not be appropriate to permit reinstatement at this stage".

From the above, it is quite apparent that the Board did not accede to the request of the petitioner for reinstatement in view of the fact that he was already removed on the ground of un-authorised absence. Subsequent to the directions of the first respondent, once again the Board took up the issue and passed the following Resolution No.986 on 30.11.1995 which reads as follows:

"The matter was discussed in detail. Member Secretary informed that as per the last Board Meeting Resolution, Mr. Srinivas was informed that his case would be taken up as and when the fresh recruitment are done by APPCB. It was also pointed out that the action of termination of Mr. Srinivas's service was taken as Government had

refused to grant leave applied by him. The present order of the Government for his reinstatement will be contradictory to the earlier stand of the Government. In view of the history of the case, the High Court judgment and the Board Resolution, it will not be desirable to deviate from earlier Resolution. It was decided to refer this matter back to Government for reconsideration".

Even this resolution also does not in any way take up the case of the petitioner for reinstatement but also for considering the petitioner's case for fresh appointment. It may not be out of place here to make a mention that an order passed by this Court in the second writ petition filed by the petitioner in W.P.No.19656 of 1996 which was disposed of on 26.11.1996 by this Court whereunder this Court taking note of the plea raised in the counter affidavit for considering the petitioner's case and taking a decision as per the Board resolution, it was directed that the first respondent herein to consider the petitioner's request for clearance to fill up the vacancies and communicate the same to the Board and on receiving such communication from the first respondent, the case of the petitioner shall be considered by the Board and appropriate orders shall be passed. Even in this order also there is no indication muchless any final determination either way in regard to the orders of termination of the petitioner which was passed on 23.07.1992. In view of the same, Iit cannot be said that the order of termination is varied with either by this Court or by any of the decision by the authorities. Accordingly, it has to be held that none of these proceedings, the orders of termination were set aside to enable the petitioner's case to be considered for reinstatement as such. All the directions which have been issued by this Court while taking note of the petitioner's subsequent qualification and also his physical handicapness is only to consider his case for an appointment which is nothing but a fresh appointment and certainly would not in any way include reinstatement. In view of the orders passed by this Court and in the absence of any determination on either way in regard to the orders of termination, it has to be held that the same cannot be re-opened nor would enable the petitioner to seek any reinstatement back into the service with the continuity service on the basis of earlier appointment. In view of the same, I do not find any merits in the above writ petition.

The writ petition is, accordingly, dismissed. No costs.

B. PRAKASH RAO, J

24th January 2005.

Chvn.

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Government of A.P., Rep. by its Principal Secretary, Environment, Forests, Science & Technology Dept., Secretariat, Hyderabad.
2 The Andhra Pradesh Pollution Control Board., Rep. by its Chairman, HUDA Complex, Maitrivanam,
II Floor, Ameerpet, Hyderabad.
3 The Andhra Pradesh Pollution Control Board, Rep. by its Member Secretary, HUDA Complex, Maitrivanam, IInd Floor, Ameerpet, Hyderabad.
4 The Andhra Pradesh Pollution Control Board, Rep. by its Addl, Secretary, HUDA Complex, Maitrivanam, IInd Floor, Ameerpet, Hyderabad.

5 Two C.Cs to the G.P. for Irrigation & Comm. Area Development, High Court Buildings, Hyderabad (OUT).

6 Two C.D. copies.